OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CASE:GLS-113871-98
CC:F&M:GLS-1258-98
PCL:HHagen

MEMORANDUM FOR SCOTT EVERETT
SENIOR ANALYST, OFFICE OF TAX CRIMES

FROM: Donald M. Suica
Chief, Public Contract Law Branch (General Legal Services)
Internal Revenue Service

SUBJECT: Proposed Informant Agreements; Illinois District; Informant "A" and Informant "B"

This memorandum responds to your request for an expedited review of the proposed informant agreements and waiver of compensation limitation of Policy Statement P-4-86 in the above-referenced matter. Specifically, you have asked: 1) whether an Informant Agreement can legally be executed by the Informant's attorney rather than the Informant, and, 2) whether payments can be made directly to the Informant's attorney rather than the Informant. In addition, we have comments on the Agreement itself.

The first question presented is whether the Service can properly contract with an attorney representing an unnamed Informant. Prior to issuance of its decision in Matter of: Internal Revenue Service - Contracts with Agents for Unnamed Informants, B-137762 (July 11, 1977) (unpublished), the Comptroller General had long adhered to the rule that the Government could not contract with an agent acting on behalf of an undisclosed principal. See B-164244 (June 12, 1968). An agent could bind a principal in a contract with the Government only upon presentation of a properly executed power-of-attorney. See B-143132 (August 10, 1960). Thus, under these prior decisions, the Government was barred from entering into contracts where the fact of the agency was disclosed, but the identity of the principal was concealed (i.e. "a partially disclosed principal").

In Internal Revenue Service - Contracts with Agents for Unnamed Informants, the Comptroller General held that the rules embodied in the prior decisions designed to prevent frauds upon the Government, were not applicable with respect to IRS reward cases since the basic principles of procurement law were not involved. It recognized that in situations where the information provided by the partially disclosed principal is

not useful, payment will not be made. However, GAO also noted specifically that pursuant to 26 C.F.R. § 301.7623-1(f):

> An Informant who intends to claim a reward under section 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the Informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the Informant.

The Comptroller General ruled that this requirement, contained in 26 C.F.R. § 301.7623-1(f), which implements the IRS' authority under section 7623 of the Internal Revenue Code to pay rewards to informants, requires disclosure of the informant's true name prior to reward payment. Thus, while the informant need not be identified prior to the evaluation of information and its use in collection of unpaid taxes, identification is mandatory under the regulation before reward payment can be made. See also 53 Comp. Gen. 364 (1973) and 51 Comp. Gen. 30 (1971). Accordingly, pursuant to 26 C.F.R. § 301.7623-1(f), disclosure of the Informant's true identity must occur before any payment is made.

With regard to the question of whether payment may be made directly to the Informant's attorney, [redacted] we offer the following comment. As long as it is understood that the Informant's name will be disclosed before payment, this action is permissible. In addition, because it is contemplated in the Agreement that [redacted] will execute the Agreement in his capacity as agent for the Informant, we recommend

privacy

[redacted]

DP

[redacted]

DP

[redacted]

DP

It is noteworthy that the issue of reward payment for information leading to the collection of unpaid tax liability from "related taxpayers" was considered by the Court of Federal Claims in Merrick v. United States, 18 Cl. Ct. 718, 89-2 USTC ¶ 9645 (1989). That case involved information provided by an informant regarding an illegal tax shelter in which nearly 1,600 persons had invested. Although the Service recovered over $10 million, it calculated the reward based upon the total aggregate recovery instead of the $50,000 per investor computation sought by the informant. As a result, the Service paid only a $31,000 reward. On remand, the Claims Court upheld the Service's position that because the IRS regarded the identified taxpayers as "related" in a single tax avoidance scheme, as referenced in IR Manual 9371.5(6), the reward was subject to the $50,000 aggregate recovery limitation rather than $50,000 for each individual investor.

[redacted]

DP

Page withheld in full

Deliberative process privilege